Supreme Court, U. S.
FILED
AUG 13 1979
HOWARD R. DAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1143

CYRUS VANCE, Secretary of State of the United States,

Appellant,

v.

LAURENCE J. TERRAZAS,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE APPELLEE

KENNETH K. DITKOWSKY
JAY CONTORER
DITKOWSKY & CONTORER
2626 W. Touhy Avenue
Chicago, IL. 60645
(312) 764-3421

Attorneys for Appellee

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

Page

STATEMENT OF FACTS 1

SUMMARY OF APPELLEE'S ARGUMENT 6

ARGUMENT:

I. THE APPELLANT CONCEDES THE VERY ISSUE HE APPEALS HEREIN 10

II. THE DECISION OF THIS SEVENTH CIRCUIT COURT OF APPEALS "REPRESENTS A COMMENDABLE JUDICIAL EFFORT TO AVOID THE HUMAN INDIGNITY THAT RESULTS WHEN CITIZENSHIP, THE MOST PRECIOUS RIGHT, IS INVOLUNTARILY AND UNJUSTLY DIVESTED" 14

A. This Court Has Recognized in Its Decision in *Addington v. Texas* That Due Process Required The Government to Meet the Standard of Proof of Clear, Convincing and Unequivocal 16

B. Denaturalizatio.. or Expatriation is a Devastating Punishment, Violative of the Fifth, Eighth and Fourteenth Amendments to the Federal Constitution 18

III. CONGRESS IS WITHOUT POWER TO TAKE AWAY THE CITIZENSHIP OF A CITIZEN 23

CONCLUSION 31

TABLE OF AUTHORITIES

Cases:

Afroyim v. Rusk,
387 U.S. 253 ..... *passim*

Addington v. Texas,
No. 77-5992 (Apr. 30, 1979) ..... *passim*

Kennedy v. Mendoza-Martinez,
372 U.S. 144 ..... *passim*

Marbury v. Madison,
Cranch 137 18

Matheson v. United States,
532 F.2d 809 ..... *passim*

Nishikawa v. Dulles,
356 U.S. 129 7,10,14,27

Perez v. Brownell,
356 U.S. 44 15

Trop v. Dulles,
356 U.S. 86 7,10,14,27

Constitution and statutes:

United States Constitution:

Fifth Amendment 18,30
Sixth Amendment 30
Eighth Amendment 18,19
Fourteenth Amendment ..... *passim*

8 U.S.C. 1481 (c) 10,11
8 U.S.C. 1181 (c) 31

Miscellaneous:

Black's Law Dictionary (Fourth Edition) P.947, 1746 12

James B. Ekins, *Virginia Journal of International Law,* Vol. 19:1, P. 129 14

8 Foreign Affairs Manual 224.10a, 284 15

The New Webster Encyclopedic Dictionary of the English Language (1972) P. 50, 448, 941 11,12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1143

CYRUS VANCE, Secretary of State of the United States,
Appellant,

v.

LAURENCE J. TERRAZAS,
Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE APPELLEE

STATEMENT OF FACTS

The Statement of Facts as presented by the Appellant states Appellant's version of the facts in a parochial and inaccurate manner and neglects to acknowledge clarifications made by the Appellant's own witnesses to their original statements (See Appellee's Motion to Dismiss Appeal, PP 1-4).

The Appellee and his mother testified uncontrovertedly, that the Appellee was attending school in Mexico and the school would not give him his degree unless he could *prove* himself a Mexican citizen. Disturbed over this problem, the

Appellee consulted with his father, a strong-willed Mexican public official, who vowed he would take care of the problem. Further, Appellee uncontrovertedly testified that his father, Governor Terrazas, confronted his family in the family home in Niles, Illinois, and handed his son (Appellee) a paper to sign in blank. The document was not filled in and the events are recalled (ROP 488) by Appellee's mother, as follows:

> "And my husband explained to me that Larry had gotten notification from the school head, the head of the school he was going to, that they found in their Records that they had no record that he was a Mexican citizen, and that he couldn't graduate, couldn't receive his certificate if he couldn't prove that he was a Mexican.
>
> So, well, I got very angry. I said, 'You are the one who put him in that school, you didn't tell me that he had to have a certificate.'
>
> He said, 'Well, I didn't know that.' He said, 'I told the head of the school he was a Mexican because he was my son, and as my son, he had dual citizenship. So when they asked me if he was a Mexican, I says, 'Yes. He's my son. He's a Mexican.'
>
> So I got very angry and I told him he was stupid for registering him in a school where this was going to be a requirement later on. So, of course, one word led to another, and he said that he hadn't been aware at that time that there was anything wrong, and he said 'There's still nothing wrong. He is a dual citizen. Both of my children are. I have always told you this. So we have a paper here that I have obtained, and it is an application to certify his Mexican nationality, and when he gets that returned to the school, he will get his degree.'
>
> So I asked him, I said, 'Well, will that hurt his American citizenship?' He said, 'No, I told you that for years, and years, and years now that my children are dual citizens.' I took his word for it.

> Q. Was that document filled in?
>
> A. It was typed with blank spaces to be filled in."

The Appellant, as part of his production of evidence, produced documents which included a Power of Attorney and an Application for Certificate of Mexican Nationality (Exhibit 32) *neither of which bore the signature of the Appellee, Laurence Terrazas.* Appellant, by his witness Parsons, acknowledges that Exhibit 32 (ROP 236) did not bear Laurence Terrazas' signature and Appellant never produced a scintilla of evidence to prove that Exhibit 32 did not result in expatriation rather than the document on Page 4 of the Appellant's Brief. Both are Applications for Certificate of Mexican Nationality, one does have Appellee's signature on it and one does not. No evidence distinguished which of these was relied upon as the alleged "fatal" act of Appellee.

The date of the alleged taking of an oath by Appellee Laurence Terrazas has never been localized much less proven. In the Appellant's present Brief (BA 5) he uses the date April 13, 1971. The District Court found the date to be August 3, 1971 (JS 19a). The Certificate of Loss of Nationality typed by Appellant's witness Maria Ibarra and signed by Appellant's witness, Wesley Parsons, states April 3, 1971. Ironically, the Appellant's witness Parsons enlightened the Trial Court, in uncontroverted testimony, that Mexico has abolished the oath (ROP 415). Appellee Laurence Terrazas asserts that he never took an oath of allegiance to Mexico, further, it is clear that it was not possible to do so.

Appellee did not "appear" at the office of Parsons as indicated at Page 5 of the Appellant's Brief, but was directed there by an official of the United States Department of State

whom he met at a party (ROP 560). Then, the Appellee went as directed to the Citizen Protection Section of the United States Consulate (an ironic title in this case). Appellee asserts that Parsons told him that he had committed an overt act of treason. Parsons himself admitted that he told Appellee (ROP 177):

> "The one thing that you definitely have got to watch out for and that you should not do, because it is an expatriating act, and if you do it you will expatriate yourself and lose your citizenship, is you should not obtain a Certificate of Mexican Nationality. . . ."

The determination of expatriation was not based on an action of the Appellee, but actually was based on an act of the Mexican Government. The alleged expatriating act was to have Mexico issue a Certificate of Mexican Nationality (ROP 177, 178, 219, 234). (See also statement of Appellee's mother on ROP 488,490 herein.) No intention is shown by Laurence Terrazas to give up his United States Citizenship. His only intent was to do what his father said was necessary for him to graduate from school.

Appellant concedes that the Appellee was "surprised" (BA 6) to discover that, according to Wesley Parsons and Maria Ibarra (his Consular employee and a Mexican national), he was not entitled to his United States Citizenship.[1]

Terrazas was informed by Wesley Parsons that his case had to be documented and Parsons and Consular employee Ibarra promulgated therefor, a labyrinth of incriminating documents, all adverse to Appellee's citizenship interests. Appellee foolishly relied upon their expertise and at their direction and insistence, signed the documents. Exhibit 14A

[1]Parsons admitted that Terrazas was not even aware he had allegedly expatriated himself (ROP 262).

which preceded Exhibit 14, found in the Appellant's Appendix, demonstrates the degree of editing of documents which occurred. Ms. Ibarra testified that she made changes in the documents with at least two pens; some changes were in handwriting and others in printing; some changes were made in pencil and some in ballpoint pen. These changes were all incorporated in Exhibit 14.

Ironically, the documents prepared by Ibarra and Parsons did not indicate that they were for the purpose of obtaining a Certificate of Loss of Nationality, and in point of fact, appear to violate the written instructions of the Foreign Affairs Manual. Appellee never knew that this perfidious purpose was occurring.[2]

Terrazas was not properly informed of the procedures which were to be imposed upon him. He was told that by obtaining a Certificate of Mexican Nationality, he had committed an overt act of treason against the United States. Terrazas was led to this belief by the statements of Parsons, and indeed, in Exhibit 14A, in the portion edited out, Terrazas stated:

> "I do not consider what I have done is an overt act however, that is what I have been told by the American Consulate Officer in Monterey, Mexico. . . . I wish to be allowed to return to the United States of America in the future to visit my mother, my sister, my father's grave, my relatives, and my friends, without having to worry about a federal warrant for my arrest. I do not consider what I have done a criminal offense."

The assertion of the evidence adduced in Appellant's

[2](TR 276-277) Both Parsons and his secretary admitted that they did not know how to obtain a Certificate, but they insisted that not only was this the only expatriating act they discovered (and they did no investigation prior to advising Appellee and the Department of State), but that the mere existence of such a document was proof positive of expatriation.

Statement of Facts is less than accurate. Parsons admitted that the Terrazas case was not one of draft avoidance. Indeed, it appears affirmatively that Appellee returned to the United States for the special purpose of taking his physical examination for the American Military Draft. Further, Mrs. Fugman testified uncontrovertedly that she had a close relationship with Laurence Terrazas and he had not manifested to her any intention to give up his citizenship. Mrs. Fugman was the only disinterested, non-related person presented to testify as to young Terrazas' state of mind and demeanor.

The Government flew in witnesses from the far corners of the world to testify, but it never presented the Dean of the school in Mexico, neighbors in Mexico, employers or other persons who might have been able to contest the statements made by Appellee, Mrs. Terrazas and Mrs. Fugman. Instead, the Appellant came forth with Mr. Wyatt Johnson, who on Page 21 of his Evidence Deposition, explained the reasons for the amazing number of documents being prepared and presented in this matter, to-wit:

"Mr. Ditkowsky: Use it, Use the word he said.
Mr. Dent: Is it necessary for him. . . .
Mr. Johnson: Well he (sic.Parsons) said this is a lesson in CYA.
Mr. Ditkowsky: CYA?
Mr. Dent: Cover your ass, I think. It's a legal term."

SUMMARY OF APPELLEE'S ARGUMENT

Laurence Terrazas views his citizenship not as an abstract and esoteric concept, but as the embodiment of all the rights, privileges and immunities reserved in the People pursuant to

the United States Constitution and granted to the People under the various and sundry State Constitutions. Citizenship is the right to have rights.

The leading cases, to-wit: *Trop v. Dulles,* 356 U.S. 86; *Nishikawa v. Dulles,* 356 U.S. 129; *Kennedy v. Mendoza-Martinez,* 372 U.S. 144; and *Afroyim v. Rusk,* 387 U.S. 253, all establish the principle that an individual citizen of the United States of America (and the sovereign State of Illinois) cannot be deprived of his citizenship without *voluntarily* and *knowingly* assenting to its relinquishment. (See Brief of Appellant, PP 19 and 20.)

It is axiomatic that when one measures the *Rule of Law* of *Trop, Nishikawa, Kennedy* and *Afroyim,* the measurement must not make a sham of the Rule of Law being considered.

In Argument I, the Appellee respectfully submits that the Appellant *concedes the very issue that he appeals.* Words are tools of communication, and Laws must be understood by the people that they affect. The word "assent" used in *Afroyim* and the word "Voluntary" used in *Trop, Nishikawa, Kennedy* and *Afroyim* are clear and not ambiguous. Voluntary expatriation means *that a person remains a United States Citizen until he, of his own volition choses to no longer be a citizen.* Thus, when Appellant's witness Wesley Parsons admitted at ROP 262 that Laurence Terrazas did not know that he had given up his citizenship until he was told he had by Parsons, the essential, requisite, knowledgeable scienter was missing. The attempts by the Appellant to construe the word "assent", "intent" and "voluntary" to create *res ipsa loquitur* conception of "voluntary", if affirmed would be without substance and an unconstitutional usurpation of basic human and constitutional rights.

The unlimited power and resources of the Government

effectively overwhelm the citizens ability to defend himself. Thus, as in the instant case, when a citizen, without warning, learns from Government employees that he is no longer a citizen and is unaware of what, how or when he did something which resulted in his being declared a non-citizen, it is intolerable to allow the Government to so act using a minimal standard of proof such as the Appellant desires herein. To do so, would remove all equities which the individual citizen has left.

Argument II discusses this Court's recent decision in *Addington v. Texas,* No. 77-5992 (Apr. 30, 1979) which Appellee believes dispositive of the issue. Terrazas submits that at the very time that he was being authoritatively informed by Wesley Parsons and Maria Ibarra[3] that because he possessed a Certificate of Mexican Nationality he was no longer an American Citizen, the Appellant was urging the Court in *Matheson*[4] to refuse to recognize the avowed expatriating acts of Mrs. Burns and to determine that mere possession of a Certificate of Mexican Nationality was not expatriation.

Appellee further submits that *Kennedy v. Mendoza-Martinez,* cited supra, noted the punitive aspects of expatriation, and thus a high standard of proof must be required to protect the rights of a citizen from an inappropriate declaration that he is not a citizen. In the instant case, it is to

---

[3]The testimony adduced at Trial indicates that approximately 100 individuals were deemed expatriated by the Citizen Protection Unit, i.e. Parsons and Ibarra, as a result of their possession of Certificates of Mexican Nationality. The only substantive distinction between the *Terrazas* and *Matheson* cases is that Terrazas is a poor person and Mrs. Burns was the grandchild of Jay Gould and millions of dollars were involved in her estate.

[4]*Matheson v. United States,* 532 F.2d 809.

be noted that Parsons testified that Mexico has abolished the Oath. However, the Appellant contends that Appellee *took an Oath* and thereby expatriated himself. This contradiction is not explained by the Appellant, nor does Appellant explain the contradiction in certain documents which were produced. Two Applications for Certificate of Mexican Nationality were produced herein, one signed in blank and one bearing a signature which was not that of the Appellee. The Government does not distinguish which one of these documents resulted in Appellee's expatriation. Further, because of these contradictions, Appellant was unable to categorically state that on such and such a date the "alleged oath" took place and was unable to inform the Court as to where and when the alleged oath was taken. In point of fact, no oath had ever been taken.

Appellant's Argument III builds on the foundation laid by the Appellant Vance at BA 16, 19, and 20, and notes the relative pecuniary abilities of the parties to sustain their burdens and the relative importance of the decision herein to the instant parties. To the Appellant Vance the decision herein is of absolutely no moment, except that he will be intellectually satisfied by a judicial victory. However, to the Appellee Terrazas, the decision has grave and serious consequences. By the stroke of a pen the Appellee may become an alien in the land of his birth and the entire quality of his life can change. Ironically, the change can occur by acts which cannot be clearly articulated and possibly by the act of third persons. Young Terrazas is sentenced to a life of frustration, knowing that if were a millionaire such as Mrs. Burns in the *Matheson* case, the very Appellant herein would have moved "heaven and earth" to prevent his expatriation. Further, he realizes that if he had stayed away from Appellant's Citizen Protection Unit, his rights of

citizenship would have been protected and he too would enjoy Equal Protection of the Law and the protections of the Fourteenth Amendment.

Appellee respectfully submits that the object of the Office of the Secretary of State is to protect the citizenship rights of citizens and not to separate citizens from their citizenship. Vance may desire to expedite abrogations of citizen rights by the presumption of 8 U.S.C. 1481(c) and wish to determine who is a citizen, but such is not really his function.

The statutory presumption of Section 8 U.S.C. 1481 (c) results in massive injustice and inequity. Instead of providing a judicial aid, it over-burdens the Scales of Justice to unduly and unconstitutionally impair the ability of the citizen to defend the contentions of government. The statute, by its presumption, renders the decision of this Court in *Afroyim, Trop, Nishikawa, Kennedy* and *Addington* ineffective and just form rather than substance.

It is the contention of Appellee that *Afroyim, Trop, Nishikawa, Kennedy* and *Addington* were intended to be substantive and they and the decision of the Seventh Circuit Court of Appeals should be affirmed. Laurence Terrazas should be declared a citizen of the United States and the State of Illinois.

ARGUMENT

I.

THE APPELLANT CONCEDES THE VERY ISSUE HE APPEALS HEREIN.

In *Afroyim v. Rusk,* cited supra, the Court stated:

"The fundamental issue before this Court here . . . . is

whether Congress can consistently with the Fourteenth Amendment enact a law stripping an American of his citizenship which he has never voluntarily renounced or given up (P.760)

. . . . We reject the idea expressed in Perez that, aside from the Fourteenth Amendment Congress has any general power, express or implied, to take away an American citizen's citizenship *without his assent* . . . In our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship. . . . The Constitution. . . . grants Congress no express power to strip people of their citizenship." (emphasis added)

The Appellant at BA 25 states:

"We think it evident that determination of the constitutionality of Section 1481 (c) requires this Court to decide whether expatriation requires a specific intent to surrender citizenship. . . .

. . . . If 'voluntariness' in this context means an act done with specific intent, then we would not defend the constitutionality of the presumption. . . ." (BA 26)

The words which the Appellant discusses are the words, "voluntary" and "specific intent". The Court in *Afroyim* used the word "assent" in its ruling. Words, while not having precise meanings, are intended to be tools of communication, not legalistic debates. Laws in a democratic society are intended to guide society not create artificial barriers to freedom. Certainly, the right of citizenship does not rest on the tortured and procrustean interpretation of bureaucrats, but it rests in the bosom of the Bill of Rights and the Fourteenth Amendment.

The word "assent" is defined in *The New Webster Encyclopedic Dictionary of the English Language* (1972) at P. 50, as follows:

"The act of the mind in admitting or agreeing to the truth of a proposition; consent; concurrence; acquiescence; agreement to a proposal; accord, agreement; approval."

The word "intend" (the root word for intention and intent) is defined at P. 448, as follows:

"To fix the mind upon, as the object to be effected or attained; to mean; to design; to purpose. . . .

Intent: Having the mind strained or bent on an object. . . ."

Black's Law Dictionary (Fourth Edition) at P. 947, defines "intent" as follows:

"Design, resolve or determination with which a person acts. . . . being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts."

and at P. 1746 defines "voluntary":

"Unconstrained by interference; unimpelled by another's influence; spontaneous; acting of oneself. . . Done by design or intention, purpose, intended."

Finally, *The New Webster,* Ibid. at P. 941, defines "voluntary":

"Proceeding from the will; done of one's own accord or free choice. . . ."

The use of these words in their common meanings as understood by the common man, should not be a problem for the Appellant to understand. They are commonly understood to mean that a "voluntary" act is an "intended" act. A negligent act is not voluntary, nor is a careless act or a reflex voluntary. Applied to the instant case, the Seventh Circuit Court of Appeals was indeed correct in determining that an individual could not be deemed to have assented to giving up his citizenship if he did not consciously know that he had in

fact, and in law, given it up.

As a practical matter, the United States of America is an extremely complex society. Its language, English, is not precise, but the needless torture put to its meaning in the Appellant's Brief is unnecessary, except as to attempt to create distinctions without a difference, for "confusion value". Appellant seems to believe that when there is nothing substantive to say, it is best to try and confuse the facts and the law. The common man is familiar with basic language and therefore the subtleties which Appellant promulgates and with which he struggles to distinguish between the words "specific intent" and "voluntariness" are lacking in relevance. Appellant never even mentions the word "assent" in his Brief, although the term "assent" as used in *Afroyim* is clearly defined and simple in its usage. It is understood to mean that a citizen may continue to be a citizen for as long as he personally so desires to be one. The Congress is without power to involuntarily expatriate. Under Afroyim, *Congress,* by direction or indirection, cannot expatriate a citizen without his assent.

It is submitted that the word "assent" as used in *Afroyim* is identical to the term, *"specific intent"* as used by the Appellant and the statements made by the Appellant on PP 25 and 26 of his Brief are therefore akin to a confession of error on the part of the Appellant.

II.

THE DECISION OF THIS SEVENTH CIRCUIT COURT OF APPEALS "REPRESENTS A COMMENDABLE JUDICIAL EFFORT TO AVOID THE HUMAN INDIGNITY THAT RESULTS WHEN CITIZENSHIP, THE MOST PRECIOUS RIGHT, IS INVOLUNTARILY AND UNJUSTLY DIVESTED". *(Virginia Journal of International Law,* Vol. 19:1, P 129.)

President James Carter has declared to the world that this Nation is dedicated to the preservation of human as well as legal rights. The Appellant herein, Cyrus Vance, is not consistent with the public statements of his mentor, and in point of fact, the Brief filed herein appears to urge this Court to over-rule *Kennedy, Addington, Afroyim, Trop* and *Nishikawa,* and ignore the Government's arguments advanced in *Matheson v. United States,* 532 F.2d 809.

Even a lawsuit that reaches the intellectual sphere of the Supreme Court of the United States involves a case and a controversey and the rights and futures of real, live people lie in the balance. In such cases, the interests of the parties are measured by an abstract concept referred to as the "standard of proof". Phrases such as "preponderance of the evidence", "beyond a reasonable doubt", "clear, convincing and unequivocal", denote the realm of fact finding necessary to measure the standard of proof. Unfortunately, the fact finder does not decide the issues in a vacuum, and when a young lad is stripped of his citizenship for allegedly taking an oath of allegiance to Mexico (which Nation has abolished the oath), all the legalistic rationalizations just do not make the actions of the United States Government proper and right.

The Appellant herein desires to re-argue *Perez*[5a] and *Afroyim,* but fails to explain how in *Matheson* it presented the very argument it now, in its 80 page Brief herein, fails to acknowledge. Citizenship is not a badge such as the Yellow Stars of David worn by Jews under the yoke of Nazism so the government could tell who they were. Free democratic government is interested in *due process* for all persons within its jurisdiction, not a head count, or expeditious, involuntary denaturalization of its subjects. We are a Nation of immigrants and most of us have ancestors who fled tyrants and oppressors. It would be ironic if in the latter part of the Twentieth Century, young citizens such as Laurence Terrazas could lose their most precious right, i.e., citizenship, without being aware of having done so.[5]

The "Bible" of the Foreign Service Officer is the Foreign Affairs Manual (FAM) and the expressed position therein contradicts the representations made by Appellant Vance herein. At 8 FAM 224.10a it states:

> "Rights and privileges of nationality in the United States are to most persons their most valuable assets and should not be taken away from them except upon clear and convincing evidence. . . . 'Rights of Citizenship are not to be destroyed by ambiguity'."

At 8 FAM 284, Attorney General Clark states:

> "Under any reading of *Afroyim* . . . . it is clear that an act which does not reasonably manifest an individual's transfer or abandonment of allegiance to the United

[5a] *Perez v. Brownell,* 356 U.S. 44.

[5] Wesley Parsons, the Consular Official charged with protection of citizens in Monterey, Mexico, testified at ROP 262:

> "Q. And he didn't know that he had allegedly expatriated himself until you told him that he had, isn't that correct?
>
> A. That is true."

States cannot be made a basis for expatriation."

The quoted statements from the Foreign Affairs Manual as well as the arguments of the United States Government in *Matheson*, ARE BINDING and dispositive of the issue presented herein. It would be a denial of equal protection of the law to purport and apply a clear and convincing standard to some individuals and not to young Terrazas.

A. THIS COURT HAS RECOGNIZED IN ITS DECISION IN *ADDINGTON V. TEXAS* (cited supra) THAT DUE PROCESS REQUIRED THE GOVERNMENT TO MEET THE STANDARD OF PROOF OF CLEAR, CONVINCING AND UNEQUIVOCAL.

It is submitted that *Matheson* and *Addington* are essentially on all fours with the instant case. *Matheson* involved a relative of Jay Gould and his millions. The document signed by Mrs. Burns therein was not rationally distinguishable from one of the documents which was presented herein to induce the issuance of the Certificate of Mexican Nationality. Appellee still maintains that the forged Application for Certificate (Exhibit 32) just as probably promulgated the Certificate of Mexican Nationality as the document signed in blank.

In *Matheson*, taxation of the estate was at issue and the United States Government did not consult Maria Ibarra, Wesley Parsons or the Citizen Protection Unit to ascertain if Mrs. Burns had expatriated hersef. The mere possession of a Certificate was not determinative, and with thousands of dollars of tax money at stake, it was argued that Mrs. Burns did not intend to expatriate herself and give up her United States Citizenship.

In *Addington*, the Court faced the problem of the civil commitment of a youth to a State Mental Hospital. Mr. Justice Burger stated the issue:

> "The question in this case is what standard of proof is required by the Fourteenth Amendment to the Constitution in a civil proceeding brought under state law to commit an individual involuntarily for an indefinite time to a state mental hospital.
>
> The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of fact finding is to instruct the fact finder concerning the degree of confidence our society thinks he should have in the correctness of the factual conclusions for a particular type of adjudication. In re *Winship*, 397 US 358, 379 (1970). The standard serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision."

Mr. Justice Burger analyzes the various standards, as applied to various types of matters, and then states:

> "Similarly, this Court has used the 'clear, unequivocal and convincing standard to protect particularly important individual interests in various civil cases. See e.g., *Woodby v. INS*, 385 U.S. 285 (deportation); *Chaunt v. United States*, 364 U.S. 350, 353 (1960) (denaturalization); *Schneiderman v. United States*, 320 U.S. 118, 125, 159 (1943) (denaturalization). . . . In cases involving individual rights, whether criminal or civil, 'the standard of proof at a minimum reflects the value society places on individual liberty.' "

It is clear that in the United States of America, citizenship and individual liberty are closely related and cherished. To deny Laurence Terrazas his citizenship is to deny him his greatest and most treasured asset. The denaturalization of a citizen is of greater consequence than internment in a Texas mental hospital.

B. DENATURALIZATION OR EXPATRIATION IS A DEVASTATING PUNISHMENT, VIOLATIVE OF THE FIFTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION.

Mr. Justice John Marshall in *Marbury v. Madison,* Cranch 137, promulgated the Credo of American Law when he asked the question, if a citizen was wronged, did he have a remedy?

> "If he has a right and that right has been violated, do the laws of this Country afford him a remedy?
>
> The Government of the United States has been emphatically termed a Government of laws and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right."

Our Republic is unique, not only because we as a Nation opened our doors to the multitudes of victims of famine and oppression, but because our laws are based upon Divine Convenants, as we as a Nation seek not formal compliance with procrustean rules and regulations, but *substantive justice.* We are not bound by the rigors of the English Common Law and its forms of action, but instead are bound by a more basic concept, the concept of right and wrong.

In *Kennedy v. Mendoza-Martinez,* cited supra, Mr. Justice Goldberg, in writing for the Court, noted the punishment aspects of *involuntary expatriation:*

> "The punitive nature of the sanction here (P.168) is evident under the tests traditionally applied to determine whether an Act of Congress is penal or regulatory in character. . . . Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment - retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned, are all relevant to the inquiry and may often point in different directions. Absent conclusive evidence of congressional intent as to the penal nature of a statute, these factors must be considered in relation to the statute on its face."

The Court then found that expatriation was *punitive* in nature and rejected arguments such as presented by the Appellant herein, as violative of the Fifth and Sixth Amendments to the Federal Constitution.

The instant case should be more easily determined than its predecessors as it discusses not the survival of the Republic, but the intrusion of Government into the life of a youngster to confuse him as to his citizenship and then document a fact which everyone knows not to be a fact. More specifically, Appellee focuses upon the following facts:

1. Mexico has abolished the Oath, and thus it was impossible for Laurence Terrazas to take an oath.[6]

2. The record contains no testimony that on such and such a day, at such and such a place, Laurence Terrazas appeared

[6]It is elementary that in abrogating his citizenship, fundamental due process and morality would require an accurate statement of what Terrazas did, when he did it, how he did it, where he did it and who was present. Yet a search of the record will reveal Appellant and his servants Wesley Parsons and Mexican National Maria Ibarra, were not in the least concerned about ascertaining facts. Parsons was interested in documenting the case and according to Johnson's sworn deposition, to "CYA".

in the presence of some person or persons, raised his hand and stated words of allegiance to a foreign sovereign.

3. The records contain no testimony that Laurence Terrazas did any act inconsistent with his United States Citizenship. It must be remembered that in 1970 and 1971, when young Terrazas was a temporary resident in Mexico, he was a dual citizen. Mr. Afroyim apparently acquired Israeli citizenship in 1950, a year before he voted in the Knesset election, and in fact emigrated to Israel from the United States. Terrazas acquired his dual citizenship upon birth, and having evidence of the same was not inconsistent with his United States citizenship.

4. The record fails to distinguish between the two Applications for Certificate of Mexican Nationality produced by the Government of Mexico. Exhibit 32 bears a signature which was admitted not to be that of Terrazas, and there is no evidence that it was not the proximate cause of the Certificate being issued.

5. The Appellant failed to prove any details of the alleged expatriating act; and Wesley Parsons, when he made his recommendation to issue a Certificate of Loss of Nationality, never investigated to determine what, if anything, Appellee did. He made an unwarranted assumption and since 1971 the *modus operandi* of the Appellant has been to obfuscate the issue rather than address it. Terrazas was documented out of his citizenship when he stupidly believed the Appellant's agent who told him that by possession of the Certificate of Mexican Nationality he had committed an overt act of treason and could not go home. In desperation he did what Parsons and Ibarra requested and he became another "scalp" on the belt of the Citizen Protection Unit of the United States Consulate. (According to the testimony of Ibarra at ROP 373, 100 other Americans who had obtained

such Certificates had been deemed expatriated.) Ironically, the Government of the United States was, at the same time, arguing to the Courts of the United States that possession of a Certificate was interesting but not denaturalizing for Mrs. Burns in the *Matheson* case.

6. Mrs. Fugman, the only disinterested witness testified uncontrovertedly at ROP 477 relative to her observations of Mr. Terrazas during the time period in which the events in question were occurring, and stated:

"A. Yes, I saw him before he went back to school and then I saw him when he came home. I asked him what he was doing back so soon, and he said, 'I had to come home for my physical. . . .' Like I said, I asked him why he was in and he said that he had come in for his physical and I thought it was a shame, because it was poor timing and it was costly for him to make the trip and by plane. . . .

Q. Would you describe the relationship the Plaintiff (sic. Appellee herein) had with his parents?

A. Very close. He was a very obedient child for a young man, more so than other young people I know today. . . . He was quite upset when his father died.

Q. And did he take over responsibility when his father died?

A. Yes.

Q. Did you have any conversations about his living in Mexico permanently?

A. He never mentioned living there permanently, just that he was going to school there. He never mentioned intentionally that he was going to stay there, ever. *In fact, he seemed like he couldn't wait until he was*

finished to get home. (emphasis added)

THE COURT: Did he tell you about one (sic. girl) that he was going to marry?

A. Not in Mexico, no, not seriously until Carmen, his present wife came along. . . .

I was very much surprised when all this happened. I was taken aback, really. I think Larry mentioned it to me himself in 1972 when the damage was already done, I mean, and he was very much upset about it. And I said, 'What's the matter', and he was just broken up, and he could hardly talk to me, but I finally was able to get to him and have him tell me what was wrong."

7. Mrs. Terrazas (Appellee's mother) testified uncontrovertedly at ROP 490 as to the execution of a document relied upon by the Appellant Vance:

"Well he (sic. Appellee's father) told Larry to sign the bottom, to sign his signature and he said 'We'll send it on to my brother', Jorge, Carlos' brother Jorge. And he said, 'Jorge will see that it is filled in the proper way. I'm not really sure how it should be filled in. And either Jorge will do it or he will get someone to do it for him to help him do it.'

A. And did your son sign the document?

A. Yes.

Q. And did he sign it when there was still blank spaces on it?

A. Right."

8. Parsons admitted that Terrazas was not only surprised when he was told he had expatriated himself, but did not know that he had expatriated himself until informed of it by Parsons. *In point of fact, Terrazas did not expatriate himself and is a citizen of the United States who has been improperly and illegally denaturalized.*

The application of the standard of proof suggested by the Appellant is reflected in the decisions of the District Court, the Department of State, the Passport Office and the bureaucrats who are governed by the high sounding statements of the Foreign Affairs Manual. All were unanimous in determining that the assertion that Terrazas had taken an oath, even though Mexico does not recognize the oath, was proof, by a preponderance, that an oath was taken. This assertion was so persuasive that everyone blithely attributed dates to such oath taking which ranged from April, 1971 through August, 1971, even though the documents presented reflected 1970 dates, and it is uncontested that one document presented by the Appellant was signed in blank and the other was signed by a third person. It is sugested that the practical application of the standard of proof urged by the Appellant is patently unconstitutional. For if the standard of proof which he suggests is correct, it is possible that Appellant himself could be deemed expatriated without his knowledge and consent under similar circumstances. In essence, the "standard" desired by Appellant causes a formal forfeiture in derogation of the basic principle of *due process,* but with strict adherence to the principle of always giving the accused a fair trial before finding him guilty as charged, and executing the sentence upon him.

III.

CONGRESS IS WITHOUT POWER TO TAKE AWAY THE CITIZENSHIP OF A CITIZEN.

The Appellant Vance, in his Brief (BA 16) states:

". . . . it has long been recognized in this country that the right of expatriation is a natural and inherent right of all people. . . ."

(BA 19)". . . . It has . . . . been agreed that no act can be expatriating unless it is done voluntarily, that is, knowingly and not under duress."

(BA 20)". . . . this Court decided in *Afroyim vs. Rusk* 387 WS 253, that the Fourteenth Amendment defined a citizenship that Congress had no power either under that amendment or any other provision of the Constitution to take away. That is, a person born or naturalized in this country is a citizen. . . .and. . . .cannot lose his citizenship unless he 'voluntarily relinquishes' it."

As demonstrated by *Addington* and the previous arguments of the Appellee, the Standard of Proof required to prove a particular fact may very well be determinative of the conclusion that will be reached by the trier of fact. In the instant cause, such is particularly significant since the Appellant Vance has at his disposal a significant array of legal talent, while the Appellee Terrazas has available to him only his present counsel. Legal technicians, specialists, investigators and an impressive array of attorneys are available to Vance at a moment's notice. Witnesses such as Parsons (now in the Orient) and Johnson (in the Middle East) are available to be flown in at will and the dollars to be spent are unlimited. Terrazas is proceeding herein as a Poor Man. He will never earn enough money in a lifetime to pay for food to feed his infant child and to pay other family expenses and have enough money to pay reasonable attorney's fees. From a practical stand-point, the parties are not even close to being equal in their abilities to present their cause. *It is submitted that the term, "equal protection of the law" becomes a sham when the burdens of proof are placed on the person least able to meet it,* and the litigant with unlimited resources is even granted a punitive presumption to aid his

cause.[7]

Finally, to assure that the Govermment is successful in denaturalizing a citizen, the citizen litigant is brought to a virtual state of desperation when he realizes that unless he is able to overcome the combined factors of pecuniary stress and legal burdens, he will lose everything that his ancestors fought for, sacrificed for, and even died for.

To weigh this onerous and burdensome situation against the rationale of the Appellant Vance (See P.50 of his Brief) that Terrazas must be denied his citizenship because the Government would not otherwise know who is a citizen and who is not, is patently absurd and not in accord with any Constitutional view of "equal protection of the law".

The concern of the laws of the United States is properly focused on the right of the individual under the Fourteenth Amendment and the Bill of Rights. *In the United States,*

[7]The Appellant's argument herein, stripped to the bare bones, urges this Court to adopt the proposition that if Congress should deem that "wearing a red shirt" is expatriative, then a presumption of law would arrive that the wearing of this red shirt was done voluntarily with the intention (specific or otherwise or scienter) to expatriate oneself. The Appellant asks this Court to ignore the requirement that the scienter bear a relationship to the act done and the consequences which are to be assessed as a result of the act. In the instant case, the act done was the receipt and possession of a Certificate of Mexican Nationality, which Certificate was necessary to obtain a degree. The *res ipsa loquitur* approach in matters so important as citizenship clearly contravenes the Fourteenth Amendment. Even forseeability is a required area of negligence. No reasonable man would assume that proof of dual citizenship (a right vested under the Fourteenth Amendment) would cause him to lose his United States Citizenship. At the very best, the action of Terrazas herein could be deemed a mistake of law or a mistake of fact. The words, "mistake" and "intent" (scienter) are not synonymous. If every individual who made a mistake were to be presumed to have lost his United States Citizenship, there would be no United States Citizens.

Government exists for the benefit of the citizen, the citizen does not exist for the benefit of the Government.[8]

Citizenship is casually stated to be a "most precious right". Appellee suggests an analogy to demonstrate what citizenship is. If each right reserved by the Federal Constitution and granted by the State Constitution or the Common Law were a "stick", the bundle made up of all those sticks would be United States Citizenship. Thus, the right to remain silent, the right to an attorney, the right to be free from *ex post facto* laws, the right to vote, the right to trial, the right to travel from State to State, etc., are all sticks in the "bundle" of United States Citizenship.

It is submitted that the criteria for the renunciation of one

[8]In no event can Appellee fail to comment upon the statement of Vance on P. 55 of his Brief:

> "Appellee's formal declaration of allegiance to Mexico fits all of the above qualifications as an expatriating act. It is designated by statute. 8 U.S.C. 1481 (a)(2). It was voluntarily done, as Appellee freely admits."

This statement, to be charitable, is at least inaccurate and not to be charitable, is a gross misrepresentation of objective reality. Appellee does not admit to voluntarily taking an oath and in point of fact, it is his uncontroverted testimony and that of other witnesses that he took no oath; that the country of Mexico has no oath; and what Appellee did, was to sign a piece of paper with some writing on it with blanks to be filled in. The Appellant, in making his statement on P. 55 knows that there were two Applications for Certificate of Mexican Nationality, one of which bore a forged signature, the other was signed in blank. With Appellant's conception of what constitutes voluntary expatriation, if John Doe were to sign the name "Cyrus Vance" and make Application for Certificate of Mexican Nationality, Cyrus Vance would, according to the testimony of Wesley Parsons, be deemed by the Department of State to have made an oath of allegiance to Mexico in spite of the fact that no oath is recognized in Mexico. It might, however, be possible that Mr. Vance might receive the same consideration that Mrs. Burns received in the *Matheson* case, and thus equality before the law would again be obviated.

"stick" in the bundle is greater than the criteria that the Appellant suggests for giving up the entire bundle.

The parties and the commentators refer to four cases as being the leading cases in the area of denaturalization and the standard of proof for expatriation. They are: *Trop v. Dulles, Nishikawa v. Dulles, Kennedy v. Mendoza-Martinez* and *Afroyim v. Rusk.* Recently this Court has considered the same proof issue in connection with *Addington v. Texas.*

In *Trop v. Dulles,* the question of whether or not wartime desertion would create expatriation was discussed. Trop, was a Private. He escaped from the stockade and was convicted as a war-time deserter, though his desertion was relatively short. The Court pointed out (2L.Ed.2d 630, 78 S.Ct.590) in over-turning Trop's denaturalization:

> "Citizenship is not a license that expires upon misbehavior. The duties of citizenship are numerous, and the discharge of many of these obligations is essential to the security and well-being of the Nation. The citizen who fails to pay his taxes or to abide by the laws safeguarding the integrity of elections deals a dangerous blow to his country. But could a citizen be deprived of his nationality for evading these basic responsibilities of citizenship?....As long as a person does not *voluntarily renounce or abandon his citizenship* .... I believe his fundamental right of citizenship is secure." (emphasis added)

The *Nishikawa* case involved an American of Japanese descent who, in 1939, traveled to Japan and went to work in an aircraft plant at $15 per month. He was unable to accumulate any savings and by virtue of his Japanese Citizenship (dual nationality), he was required to take a physical examination and be inducted into the Japanese Army. *Mr. Nishikawa testified that he was told by a friend who worked at the American Embassy that the American*

Consulate could not aid a dual national. Nishikawa served in the Japanese Air Force and when the war was over asked the State Department to recognize his United States Citizenship. He was not afforded that right. In Court proceedings, the Court in over-ruling the State Department stated:

> "On this record the Government has not established the voluntary conduct that is the essential ingredient of expatriation." (2 L.Ed 2d 666)

In *Kennedy v. Mendoza-Martinez,* two cases are discussed. Mendoza-Martinez admitted he left the United States to avoid the draft. He was convicted of draft-evasion and went to jail. Cort was a communist. He went to England and then on to Prague, Czechoslovakia. Cort's application for a Passport was denied on the grounds that he had failed to report for induction as ordered and remained outside the United States. That therefore he had automatically forfeited his United States Citizenship.

The Court determined that the forfeiture of United States Citizenship was clearly a penalty and that it could not countenance the forfeiture of citizenship in these cases. Therein the Court stated: (P. 184)

> "It is argued that our holding today will have the unfortunate result of immunizing the draft invader who has left the United States from having to suffer any sanction against his conduct, since he must return to this country before he can be apprehended and tried for his crime. The compelling answer to this is that the Bill of rights which we guard so jealously and the procedures it guarantees are not to be abrogated merely because a guilty man may escape prosecution or for any other *expedient reason.*" (emphasis added)

The Court reiterated at P. 186:

> "Dating back to Magna Carta, however, it has been an abiding principle governing the lives of civilized men that 'no freeman shall be taken or imprisoned or disseised or outlawed or exiled. . . . without the judgment of his peers or by the law of the land. . . .' "

The foregoing cases are not idle gossip, but the considered opinions of the Supreme Court reflecting on the very argument presented by the Appellant. They explain in detail what constitutes a voluntary act. They explain the constitutional need for substantive due process and the standard of proof of clear, convincing and unequivocal.

From a practical aspect, all Court cases are decided on their own facts within precedent guidelines. The Government advances in its Jurisdictional Statement and its Brief, two specific reasons for reversing the Court of Appeals, to-wit: 1) The need to count heads and know who is a citizen and who is not; and 2) If it does not have a simple proof to meet, it will not be able to expatriate anyone.

Mr. Vance in his Brief, improvidently attempts to paint Appellee Terrazas with the brush of draft evader. However, his witness Wesley Parsons, admitted that this was not a draft-evasion case and the record is replete with examples of Mr. Terrazas' compliance with the American draft law. Mrs. Fugman uncontrovertedly placed in the record that Mr. Terrazas came back to Niles, Illinois from Mexico to take his Army physical and *there is nothing in the record which shows an abandonment of his citizenship or of his obligation to the United States.* The innuendo and unsubstantiated statement by Appellant that Appellee wished to marry a Mexican girl is refuted by the testimony of Mrs. Fugman as well as the fact that he married a United States Citizen.[9]

[9]It has come to the Appellee's attention that the Consulate Officer is reputedly to have married a Mexican National. If the same is true, has he expatriated himself? Obviously not.

The Appellee respectfully submits that the Fifth, Sixth and Fourteenth Amendments to the Federal Constitution dictate that Congress cannot do by indirection what it cannot do by direction. Similarly, Congress cannot create a presumption that anyone "wearing a red shirt" has to be deemed to have voluntarily taken an oath of allegiance to a foreign sovereign.

Historically, we Americans were first citizens of the "State". Appellee Terrazas is a citizen of the State of Illinois. His Illinois Citizenship gives him the right to vote in Illinois elections, the right to the privileges and immunities of the Illinois Constitution. Under the Fourteenth Amendment, Appellee Terrazas became a citizen of the United States of America. This Federal citizenship initially gave him the protection, privileges and immunities of the most powerful nation on earth. The Fourteenth Amendment citizenship gave an individual rights of citizenship which we have referred to herein as a "bundle of sticks". Pursuant to the United States Constitution, each of the States is itself a sovereign entity and it covers all its citizens' particular rights, privileges and immunities. The dual citizenship envisioned by the relationship of the State of Illinois and the Government of the United States of America, represents a formidable asset, more valuable than a lump of gold, to be protected by the due process clause of the Fifth and Fourteenth Amendments.

The Appellee contends that Congress is without power to create a presumption or a standard of proof which could cause a citizen to lose his citizenship by proxy, by negligence, by a careless mistake or as punishment for even the most heinous crime, *without due process* entering the picture. The Appellee relies upon *Addington* and suggests that the recent Court decision therein is determinative of the issues herein.

If the equities are balanced, the loss of an individual's citizenship is the most devastating loss an individual can suffer, short of loss of life itself. Yet to the Appellant herein, the loss of citizenship of one of the 200,000,000 Americans means only that there would remain 199,999,999 other Americans to govern. Society in general, however, is appalled and disheartened by the deprivation of human and constitutional rights to a fellow citizen. The interest of society in a democratic country requires the Government to leave no stone unturned to protect the rights of its members. For the value of the democratic process as it pertains to one person within its jurisdiction, is the value of the democratic process as it pertains to all the people.

CONCLUSION

For the reasons proposed herein, Laurence Terrazas request that this Honorable Court restore to him his United States Citizenship and affirm the decision of the United States Court of Appeals for the Seventh Circuit that 8 U.S.C. 1181 (c) is unconstitutional. That further, this Court establish a Rule that prior to an individual losing his United States Citizenship, the person asserting that loss of citizenship must prove the following:

1. The act which promulgates the loss, i.e., expatriation and/or renunciation;
2. The date, time, place and who was present when the event occurred;
3. Scienter to expatriate or renounce, i.e. assent, intent;
4. That the action of the expatriate or renunciator is clearly inconsistent with his continuing to be a United States Citizen;

5. That the standard of proof to be presented on each of the elements must be clear, convincing and unequivocal, declaring further that this burden is an affirmative burden and not a burden which can be sustained by default, incompetence of counsel or some other deficiency in the advocate system. We must all establish that when we deal with the totality of rights, the waiver of this totality must have greater moment and greater solemnity than the waiver of any single right.

Respectfully Submitted,

KENNETH K. DITKOWSKY
JAY CONTORER
DITKOWSKY & CONTORER
Attorneys for Appellee